Ernst & Young, LLP
2323 Victory Avenue
Suite 2000
Dallas, Texas 75219
Tel: +1 214-969-8000
Fax: +1 214-969-8587
www.ey.com

26 October 2009

Mr. Andrew McGilvray
Executive Secretary
Foreign-Trade Zones Board
U.S. Department of Commerce
1401 Constitution Ave., NW, Room 2111
Washington, DC 20230

Re: Rebuttal Comments – ThyssenKrupp Subzone Application (Docket No. 51-2008)

Dear Mr. McGilvray:

The public hearing and subsequent comments filed by opponents to the ThyssenKrupp application are not materially different from those previously raised. We believe that each of the opponents' arguments is addressed in our rebuttal comments of January 8, 2009. There were, however, a few items raised by the opponents at the hearing and in subsequent submissions which were not referenced previously. This rebuttal addresses only those new pieces of information, and is intended as a supplement to previous submissions. The rebuttal also responds to questions directed to ThyssenKrupp at the hearing.

Threshold Factors

Consistency with Law and Policy. Prior to the hearing there was absolutely nothing in the record to suggest the ThyssenKrupp application was in any way inconsistent with law or policy. At the hearing, and in its subsequent comment, the Flat-Rolled Task Force of the Specialty Steel Industry of North America asserted:

> "ThyssenKrupp's subzone application is inconsistent with the Trade Act of 2002, in which Congress identified objectives to be pursued by the Executive Branch in negotiating trade agreements. The first two objectives identified in that legislation are: (1) obtaining reciprocal market access; and (2) reducing or eliminating foreign barriers in order to increase opportunities for U.S. exporters."

This is the only "inconsistency" raised by any of the opponents. As the cited portion of the Trade Act of 2002 has no present applicability, is misquoted, and if applicable, would not be inconsistent with approval of the ThyssenKrupp application, this argument is quite a stretch:

- Inapplicable. The cited section of the Trade Act of 2002 is codified in 19 U.C.S. § 3802 (a), which sets out objectives to be pursued in negotiating trade agreements "subject to the provisions of Section 3803," which applies to agreements entered into before July 1, 2007.
- Misquoted. The Flat-Rolled Task Force misquotes the statute. The second objective is not limited to "reducing or eliminating foreign barriers"(emphasis added); instead, the statute reads "to obtain the reduction or elimination of barriers and distortions that are directly related to trade and that decrease market opportunities for United States exports or otherwise distort United States trade." If approved, the ThyssenKrupp application will eliminate a barrier that decreases market opportunities for United States exports, the inverted tariff on ferroalloys which must be imported to produce stainless steel in the U.S.
- Not Inconsistent. Approval of the ThyssenKrupp application is in no way inconsistent with the objectives set forth in the Trade Act of 2002. As noted above, it is consistent with the objective of eliminating a barrier to U.S. exports. In addition, approval of the ThyssenKrupp subzone would directly accomplish a number of the other stated objectives (which the Flat-Rolled Task Force failed to cite), such as fostering economic growth, raising living standards, and promoting full employment in the United States. Finally, as explained in more detail below, the ThyssenKrupp application does not create any inconsistency with negotiations for reciprocal market access.

In sum, the Trade Act of 2002 provisions cited are not presently applicable, and if they were, are completely consistent with ThyssenKrupp's application.

U.S. Trade and Tariff Negotiations. The second threshold factor directs the Board to deny or restrict authority for a proposed or ongoing activity if "Board approval of the activity under review would seriously prejudice U.S. trade and tariff negotiations or other initiatives"(emphasis added). The opponents suggest that approval of the ThyssenKrupp application would: (1) lead to every other U.S. importer of ferroalloys also seeking foreign trade zone status, (2) cause every imported ferroalloy to be admitted into a foreign trade zone in non-privileged foreign status and be used in a manufacturing process to produce a duty free item, resulting in (3) a unilateral elimination of U.S. duties on imported ferroalloys, and (4) thereby compromising negotiating leverage of the U.S. Trade Representative in the future.

The theory that unrestricted foreign trade zone use could lead to unilateral elimination of tariffs has periodically been raised by opponents to the Foreign Trade Zones programs on a number of occasions, including at Congressional Hearings, for years. See, e.g. Hearing Before the Commerce, Consumer, and Monetary Affairs Subcommittee of the Committee on Government Operations, 101st Cong., 1st Sess. (March 7, 1989) p191; Congressional Research Service Report for Congress, U.S. Foreign Trade Zones: Current Issues (July 28, 1999) p.18. It has been routinely and completely dismissed. There is no evidence that any Foreign Trade Zone approval has ever influenced trade negotiations. And, of course, if this argument was true, virtually every foreign trade zone manufacturing approval would compromise trade negotiations. In fact, the same argument could be made with regard to any importer's strategic use of laws designed to allow duty avoidance: claiming a free trade agreement preference, utilizing GSP, drawback, first sale valuation, or a variety of other options.

Moreover, approval of this application would not result in the unilateral elimination of anything. The opponents' argument is a conjecture by the Task Force of what might happen if every importer of ferroalloys was to be granted foreign trade zone status and did nothing but make duty free products with the imports. Putting aside the speculative nature of the premise, if this situation was ever put before the Foreign Trade Zones Board, the Foreign Trade Zones Board could decide whether the situation would "seriously prejudice" trade negotiations. In fact, the Board is given explicit authority with regard to both proposed and ongoing activity if it is ever

concerned that trade negotiations would be seriously prejudiced. If this situation were ever to arise, the Foreign Trade Zones Board could review the ThyssenKrupp grant of authority, and if it determined that activity at the ThyssenKrupp subzone was seriously prejudicing trade negotiations, restrict or deny that activity. The situation is not before the Board now, however. In fact, there is no evidence that granting ThyssenKrupp subzone authority would even remotely influence trade negotiations, much less "seriously prejudice" them.

Sole and Direct Cause of Imports. Much of the opponent's argument centers on the theory that approval of ThyssenKrupp's application would be the sole and direct cause of importations of ferroalloys subjected to inverted tariffs. Nevertheless, virtually all of the commentary at the hearing contradicts that assertion. ThyssenKrupp has painstakingly documented its sourcing plans, which clearly refute any suggestion that the foreign trade zone would be the "sole and direct" cause of imports. In response to the Foreign Trade Zones Board staff's specific inquiries about sourcing options for three specific commodities, we are providing business proprietary information on updated sourcing plans under separate cover.

There are, very plainly, no threshold issues with the ThyssenKrupp application.

Public Interest

Opponents to the application also allege that the public interest standard is not met. The record is replete with evidence that ThyssenKrupp will use subzone status to displace imports, and to expand exports, exactly the goals that the Foreign Trade Zones program were designed to encourage. In fact, Michael Lutter's testimony about how subzone status will likely accelerate melt shop investment, creating jobs in the US and substituting US production for production currently done in Italy (Hearing Transcript pages 143-147) by itself provides a basis for approval consistent with longstanding practice by the Foreign Trade Zones Board.

While there is clear and convincing evidence in the record that this application merits approval, we do want to address one misstatement made by opponents. The Flat-Rolled Task Force has

made the allegation that subzone approval would not really level the playing field, because the same raw materials that ThyssenKrupp will be importing into the U.S. are imported into other ThyssenKrupp manufacturing facilities in Germany, Italy and Mexico subject to duties, which become part of the purchase price of finished products paid by US importers (Hearing Transcript page 119). These allegations are incorrect. If not intentionally misleading, they are certainly made without any experience with stainless steel operations in Europe and Mexico. While there is a statutory most-favored nation duty rate in the European Union on some of the ferroalloys, the preferential rates on every single one of ThyssenKrupp's imported raw materials is zero. ThyssenKrupp does not now, and has not in recent memory, paid any duty on these items in the EU. Similarly, ThyssenKrupp has used a variety of special programs to avoid duties in Mexico, and that will become moot on January 1, 2010, when all of the ferroalloys will become unconditionally duty free. ThyssenKrupp does not produce stainless steel in the other jurisdictions referenced by the Flat-Rolled Task Force, and consequently does not have direct knowledge of the transactional structures used by producers in those countries. We do note, however, that there are a variety of options for eliminating duty on these specific raw materials, especially if imported and used to produce steel subsequently exported to the U.S. A ThyssenKrupp subzone will indeed level the playing field, which is right now tilted in favor of foreign producers.

Finally, we do want to reemphasize that a substantial portion of the commentary given by the opponents of the application at the hearing is simply irrelevant. Whether there might be overcapacity in the U.S. market (ThyssenKrupp clearly is investing under the premise there will not), and whether or not ThyssenKrupp will make "high demand" products (ThyssenKrupp intends to sell the products it makes) are not factors in the approval process. Mr. Rich's testimony that "the only country clearly benefitting from the new carbon steel plant seems to be Brazil" is not relevant either, as the slabs which will be imported from Brazil are duty free. Whether Congress might consider a temporary duty suspension for some or all of the ferroalloys which will be imported is similarly not a factor relevant to the application before the Foreign Trade Zones Board.

Prompt Approval is Merited

The Foreign Trade Zones Board has been very generous in allowing opponents of the ThyssenKrupp application time and opportunity to explain their concerns. Despite this extraordinary effort by the Board to be sure that all views are fully vetted, nothing material has changed in the record in the past 10 months. Delay in approval works only to the advantage of the opponents.

The case put forth by ThyssenKrupp is, in a word, compelling. A ThyssenKrupp subzone would demonstrate the very essence of the Foreign Trade Zones Act—it is exactly the scenario for which the Act was created. Imports will be displaced, exports will be enhanced, capital investment in the U.S. will be accelerated, and jobs will be created. All of this will be done without changing sourcing patterns. There is only upside to approving this application, and we urge that it be approved as quickly as possible.

Very truly yours,

ERNST & YOUNG, LLP

By: Bill Methenitis

William M. Methenitis
Americas Director, Customs and International Trade Practice

WMM:lj

cc: Michael Lutter ThyssenKrupp Stainless USA, LLC
Christian Koenig, ThyssenKrupp USA